

that the non-delivery of the property to the purchaser is not *per se* evidence of collusion under the Act, *Scott v. Burch supra*. If the sale be made under the authority of the Orphans Court on a credit, the executor may receive the money before the expiration of the credit and stop the interest, the provision for credit being merely to secure a better sale, *Gwynn v. Dorsey*, 4 G. & J. 453. The executor also is, on the other hand, answerable to the purchaser in case of failure of title to the articles sold, whilst the purchase money remains in his hands undistributed and unadministered, and he is personally liable in cases of fraud, or where there is an express warranty of title; but he is, like other trustees, exempt from responsibility on any implied warranty, and indispensably so, for no one would accept an office of the kind if he were to become the guarantor of the title of him whom he represents, *Mockbee v. Gardner*, 2 H. & G. 176; *Glenn v. Clapp*, 11 G. & J. 1. However, it was laid down in *Latrobe v. Tiernan*, 2 Md. Ch. Dec. 474, to be the undoubted law of the Court, that property in the hands of a *bona fide* purchaser from executors, having power to sell, would be protected by compelling them if they had assets to pay any claim against it.

**Sales of real estate by executors.**—With regard to sales of real estate by an executor, he is by the Act of 1865, ch. 51, amending Code, Art. 93, sec. 280,<sup>25</sup> required to account for the same to the Orphans Court, in like man-

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<sup>25</sup> Amended further by the Act of 1884, ch. 426, which adds: "Provided, however, that it shall not be necessary to the validity of the sale of any such real estate by the executor that the same be ratified by the Orphans Court, as aforesaid, in any case where a court of equity of competent jurisdiction has assumed jurisdiction in relation to the sale of any such real estate." Code 1911, Art. 93, sec. 290.

The jurisdiction of the Orphans Court under this section was never exclusive. The design of the legislature in conferring it was to save the expense and delay incident to chancery proceedings, but not to take away jurisdiction in equity where the parties see fit to invoke it. *Eichelberger v. Hawthorne*, 33 Md. 588; *Keplinger v. Maccubbin*, 58 Md. 213; *Ogle v. Reynolds*, 75 Md. 145.

When an executor reports a sale to the Orphans Court, that court has the power to determine whether the will confers a power to sell. *Ogle v. Reynolds*, 75 Md. 145. Though the court may ratify a sale it cannot enforce it. Such a sale, after ratification, stands on the same footing as an ordinary agreement between persons who are competent to contract. *Carter v. Van Bokkelyn*, 73 Md. 179. The court has power to revoke its order of ratification and vacate a sale, but it cannot pass on and adjust the rights and equities of the purchaser growing out of the vacating order. *Eichelberger v. Hawthorne*, 33 Md. 588; *Montgomery v. Williamson*, 37 Md. 421. It has no power to pass on title to real estate sold by trustees who are also executors. *Blumenthal v. Moitz*, 76 Md. 564.

Where the power to sell is given to executors and trustees who are different persons, the trustees should unite with the executors in executing the power. *Poole v. Anderson*, 80 Md. 454.